

§ 83.37

and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 83.37 What procedure follows the end of the comment period on a negative proposed finding?

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 83.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

25 CFR Ch. I (4–1–16 Edition)

(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

§ 83.39 What is the procedure if the petitioner elects to have a hearing before an ALJ?

(a) If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and responses sent in response to the proposed finding.

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 83.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) *Hearing process.* The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) *Hearing record.* The hearing will be on the record before an ALJ. The hearing record will become part of the record considered by AS-IA in reaching a final determination.

(d) *Recommended decision.* The ALJ will issue a recommended decision and forward it along with the hearing record to the AS-IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

AS-IA EVALUATION AND PREPARATION OF FINAL DETERMINATION

§ 83.40 When will the Assistant Secretary begin review?

(a) AS-IA will begin his/her review in accordance with the following table:

If the PF was:	And:	AS-IA will begin review upon:
(1) Negative	The petitioner did not elect a hearing	Expiration of the period for the petitioner to elect a hearing.
(2) Negative	The petitioner elected a hearing	Receipt of the ALJ's recommended decision.
(3) Positive	No objections with evidence were received	Expiration of the comment period for the positive PF.
(4) Positive	Objections with evidence were received	Expiration of the period for the petitioner to respond to comments on the positive PF.